19 8

Department of

OFFICE

STATION

No. 2828

Dated 24-9-32

	Date	Initial
To whom sent	Given for copying	
	Copied	
	Examined	
	Signed	
	Given for despatch	
	Despatched	
	Indexed	
Pages in the file	To be destroyed on	

(SUBJECT.)

Ref.A3-No.5955-32. South Kanara Collector's Office,

Camp Gurpur, dated 14- 9- 1932.

R.P.145
Enclosure
A2969

From

Khan Bahadur J. Hussain, Bar-at-law,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue and Settlement,
M a d r a s.

Sir,

Suits - (South Kanara) - Mangalore District Munsif's Court - O.S.No. 185/32 - Assignment - Kadri village - S.No.42/3A - Reservation of path.

I enclose a copy of the plaint in the above suit, which is for a declaration that no right of way was reserved, nor did any exist in S.No. 42/3A of Kadri village assigned to the plaintiff and that the orders of the Tahsildar of Mangalore and the Collector in the matter are illegal and ultra vires and beyond jurisdiction and as a consequential relief, for restraining defendants from entering upon the plot.

2. S.No.42/3 of Kadri village of which the plot now in question forms part, was in D.R.350/1332 on the file of the Tahsildar of Mangalore assigned to one Hilary Lobo (1st Defendant with a distinct reservation of the then existing mamool rights of way. The plaintiff who was a takrirdar in that case, along with certain other parties, appealed to the Revenue Divisional Officer Mangalore who in his D.Dis. 46 D/Rev.23 dated 16-6-23, modified the Tahsildar's order to the extent of giving away a portion of the plot, viz., 42/3B, to the 3rd defendant Gracia Mary Saldanha Bai. Having failed in this attempt, the plaintiff approached the Collector with a revision petition. In this office D.Dis.No. 4319-23-Vl, dated 7-11-23, the Collector assigned in modificatio of the Revenue Divisional Officer's order in appeal, S.No.42/3A to the plaintiff. Having thus been deprived of the whole of

S.No. 42/3 and also certain other plots originally assigned to him by the Tahsildar and also unable to take his cattle from his house and cowpen in S.No. 17/24 to his fields in S.No. 42/2, H. Lobo petitioned to the Collector requesting that his rights of way may specifically reserved. After enquiry, the Collector directed in his D.Dis.No. 10355-24 dated 22-12-24, that the assignments made in his former order in revision would be subject to the reservation of mamul rights of way for men and cattle. Enquiry now held discloses that this order was not communicated to the --- plaintiff. Taking advantage of this omission as also of the omission to note it in the adangal and chitta, the -- plaintiff appears to have blocked up the path and Hilary Lobo again petitioned to the Collector and requested his interference. Though the Collector refused to interfere on behalf of the petitioner he directed the Tahsildar to make a note of the reservation of pathway in the chitta as well as in the Taluk copy of the adangal - please see this office D.Dis. 11364-30 dated 11-2-31. When the ----- plaintiff came to know of this order, which was given effect to in the Mangalore Tahsildar's N.Ref.C.No.3193-31 dated 19-2-31 at page 4 of Taluk D.R.file 350/1332, he sent a --- petition to me for its cancellation. but I declined to ---- interfere - please see my D.Dis.8203-31 dated 21-10-1931. He therefore sent a suit notice, which was simply recorded in my D.Dis.No.12245-31 dated 24-12-31. Hence the suit.

Mp1-5(D)

p10(D)

Mp1-3cy(E)

Mp15-16 cy(E)

p4(H)

M1-6cy(I)

p21cy(I)

Mp1-2cy(L)

p2cy(L)

3. Whatever be the circumstances which led to the issue of this office orders D.Dis.Nos.10355-24, dated 22nd December 1924, 11364-30, dated 11th February 1931 and 8203-31, dated 21st October 1931, there is the clear order of the Tahsildar passed in the first instance, reserving the mamul right of way in explicit terms. Both the Revenue Divisional Officer and the Collector merely modified the Tahsildar's original order to the extent of giving away portions of the plot to other parties, but neither of them interfered with

p10(D)

p15(E)

p47(H)

the reservation of path. The report submitted by the Revenue Inspector in the original darkhast case, at an undisputed ---- period, shows that the thodu between S.Nos.18/2B & 18/2C on the one side and the darkhast plot on the other was being used by Hilary Lobo to take his cattle to his bettu fields S.No. 42/2 through S.No.42/3. In these circumstances, I think the plaintiff has no case whatever. The Government Pleader, Mangalore, whom I consulted, agrees with me. I enclose a copy of his letter Ref.No.42/32, dated 24th August 1932 together with a draft written statement and request that the Board may be pleased to sanction defence of the suit and to approve the draft written statement.

4. The plaint is dated 6th April 1932. A copy of the plaint with the summons was received by me on 28th June 1932. The suit stands posted to 3rd October 1932. The connected records, particularised in the margin, are submitted for reference.

1) Mangalore Taluk D.R.350/1332.
2) Mangalore Revenue Divisional Officer's Dis.46 D/Rev.23.
3) Collector's D.Dis.4319-23-V1.
4) Do. 10355-24.
5) Do. 11364-30.
6) Do. 8203-31.
7) Do. 12245-31.

Syed. n. Abdul
15 9

For Collector.

15 9 32

5

IN THE COURT OF THE DISTRICT MUNSIF OF MANGALORE.

O.S.No.185/1932.

Between

Jacki Santhana Cocessao — Plaintiff

and

Hilari Lobo and others — Defendants.

Written statement filed on behalf of the Secretary of State for India in Council, the 2nd defendant, under Order VIII Rule 1 of C.P.Code. The defendant abovenamed begs to state as follows:-

1. This defendant is an unnecessary party to the suit and the plaintiff has no cause of action as against this defendant.

2. This defendant does not admit the correctness of the plaint allegations in paras 3 to 6.

3. This defendant submits that S.No.42/3 of Kadri village was in the first instance assigned by the Tahsildar of Mangalore to the 1st defendant in D.R.350/1332, dated 13-1-1923 with a distinct reservation of the then existing mamul rights of way. The plaintiff was a party in that case.

4. That on appeal by plaintiff and others, the Revenue Divisional Officer, Mangalore, ordered in his Dis. No.46 D/Rev.23, dated 16-6-1923, the modification of the Tahsildar's order to the extent of giving S.No.42/3B, to the 3rd defendant, and the plaintiff having submitted a revision petition to the Collector, who, in modification of Revenue Divisional Officer's order assigned 42/3A to the plaintiff in D.Dis.4319-23-V1, dated 7-11-1923.

5. The 1st defendant having petitioned that consequent on the assignment of 42/3 etc. to others, he is not able to take his cattle from his house and cowpen in S.No. 17/4 to his fields in S.No.42/2 and praying that his right of way may be specifically reserved, the same was accordingly done in Collector's order, D.Dis.10355-24, dated 22nd

December 1924 which simply directed that the assignment made in the former order would be subject to the reservation of - the mamool rights of way for men and cattle.

6. This defendant submits that, the order of the ---- Tahsildar passed in the original instance, having reserved - the right of way, and both the Revenue Divisional Officer and the Collector having merely modified the Tahsildar's original order to the extent of giving portions of the plots concerned to others, and neither of them having interfered with the --- reservation made by the Tahsildar regarding the right of way, the assignment of 42/3A and 3B is and must be deemed to be -- subject to the reservation of right of way. The plaintiff has not put a proper construction on the scope and effect of the said orders, and the construction sought to be put upon those orders by the plaintiff is unsound.

7. This defendant does not admit that the plaintiff is entitled to raise any valid objections to the orders passed by the revenue authorities and referred to in paragraphs 5 and 6 of the plaint. This defendant does not admit that the said orde have changed the scope of the grant or that they amount to any adjudication upon the rights of plaintiff and the defendants.

8. This defendant is not aware of the nature and extent of the damages said to have been caused by the 1st defendant and submits that he cannot be held liable for the same, and plaintiff must look to the 1st defendant alone for the wrongs if any ---- committed by him.

9. Even assuming but without admitting that the reservation of right of way is not justified, the plaintiff cannot hold this defendant liable for any acts or wrongs done by the 1st defendant, and it is denied that the 1st defendant committed the wrongful acts on account of the orders passed by the revenue authorities. This defendant denies that there is any connection between the orders complained of and the alleged wrongs committed by the --- 1st defendant.

10. The plaintiff has no cause of action against this ----

defendant in any event, and this defendant is not liable for costs of suit and is, on the other hand, entitled to his ---- costs.

11. This defendant is also not liable for damages or -- for any of the reliefs claimed.

Prays that the suit as against this defendant may be - dismissed with costs.

Sgd- [illegible]
For Collector.

KSR
15.9.32

9

In the Court of the District Munsif of Mangalore.

O.S.No. 185 of 1932.

Between:

Jacki Santhana Cocessao ... Plaintiff

and

1. Hilari Lobo
2. Secretary of State for India in Council.
3. Crase Mary Saldanha Bai. ... Plaintiffs

Plaint under Order VII rule I of C.P.C.

1. The plaintiff is the son of Inthru Cocessao and resides in Kadri village, Mangalore Taluk.

2. The 1st defendant is the son of Philip Lobo. The 2nd defendant is the Secretary of State for India in Council --- represented by the Collector of South Kanara, Mangalore. The 3rd defendant is the widow of Jachi Cornel. Defendants 1 and reside in Kadri village, Mangalore Taluk.

3. That Survey No.42/3A and 42/3B of Kadri village, Mangalor Taluk were assigned on darkhast by the Collector of South Kana as per D.Dis. 4319-5368-23 dated 7-11-1923 to the plaintiff and 3rd defendant respectively. No way was reserved as per the grant in either 42/3A or 42/3B but in the settlement register prepared in accordance with the grant a right of way was however reserved though unauthorised in 42/3B as there was a well marked right of way existing there. The said pathway reserved as per the settlement register in 42/3B is marked 'aa' in the plan attached hereto. There was no pathway at all existing in 42/3A either at the time of grant or at any time before it and no pathway was reserved in 42/3A.

4. Still the 1st defendant in collusion with the 3rd defendant filed some false and fradulent petition before the Tahsildar who as per Taluk Nos. 3193-31 dated 19-2-1931 and D.Dis. 14364/30 dated 11-2-31 both passed exparte appears to have ordered that the right of way exists both 42/3A and 42/3B. (~~Strengtha~~ Strengthened) by the said order in favour of the 1st defendant the 1st defendant forcebly and without right entered into

plaintiff's land and has dug out a pathway marked bb in the plan attached hereto in about August 1931 causing lot of damages to the plaintiff to the extent of Rs. 20/-.

5. The Collector having assigned the land on darkhast to the plaintiff without any reservation as early as 1923, and the right of way which existed in 42/3B having been reserved as per the settlement register the Tahsildar had no jurisdiction to change the scope of the grant or to reserve any pathway in 42/3A. At any rate it was not for the revenue department to adjudicate upon the rights of the plaintiff and defendants.

6. The Plaintiff filed a revision petition to the Collector dated 18-8-1931 to quash the said order on the ground that the said order of the Tahsildar obtained fraudulently and without notice and that it was ultra vires and beyond jurisdiction but to no avail. So also a suit notice dated 21-12-1931 given by the Plaintiff to the Collector was of no avail and hence the Plaintiff is obliged to bring this for a declaration and injunction for which the cause of action arose in about August 1931 when the 1st Defendant entered wrongfully on Plaintiff's land as said above in Kadri village where the property is situated within the jurisdiction of this Court.

7. The 2nd Defendant has been made a party to the suit as it was by the wrong, illegal and unjust orders passed by the Tahsildar and Collector above said which are ultra vires and beyond jurisdiction, the 1st Defendant has wrongfully entered upon the said land as said above and all the wrongful acts of the 1st Defendant and damage to the Plaintiff has been caused. A suit notice as said above has been issued to the 2nd Defendant under section 80 of the C.P.C. The 3rd Defendant has been added as a party as the wrongful acts have been caused in collusion with her and as the real right of way exists in her land and not in 42/3A.

8. The Plaintiff estimates the value of the reliefs sought at Rs.30/-.

9. The Plaintiff therefore prays for a decree and judgment.

(a) Declaring that there is no right of way reserved or existing in 42/3A to which the Defendants can claim a right to and that the orders of the Tahsildar and Collector above said dated respectively are illegal and ultra vires and beyond jurisdiction and as a consequential relief restraining the Defendants or their men from entering upon the Plaintiff's land 42/3A.

This relief is valued at Rs.5/-

(b) directing the Defendants to pay to the Plaintiff the damages or Rs. Rs.25/-

(c) Costs of the suit and for such other and further reliefs as the Court deems fit in the circumstances of this case.

True Copy.

Mangalore,
6th April 1932.

Sd/- xx xx xx
Vakil for Plaintiff.

True Copy.

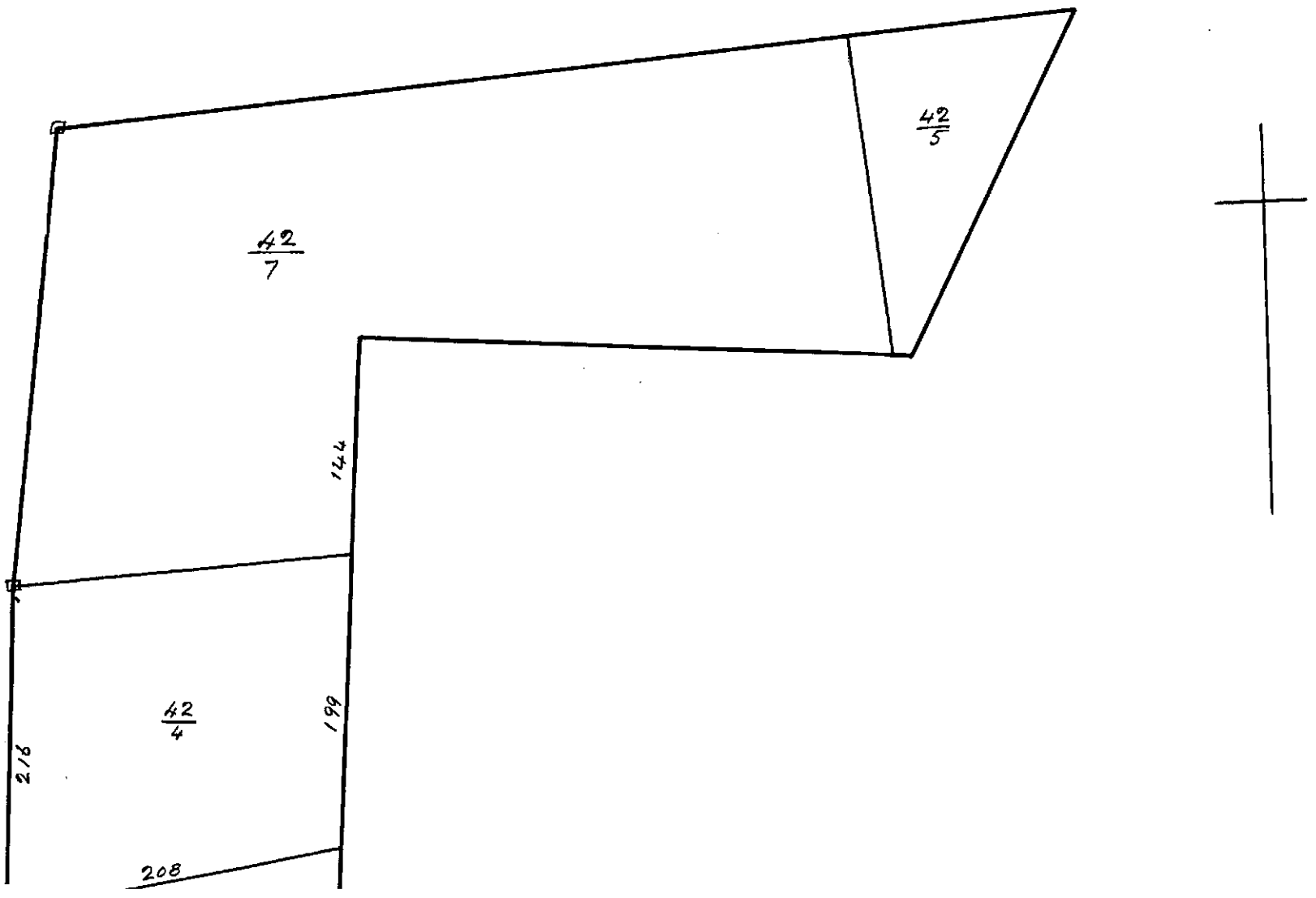
For Collector.

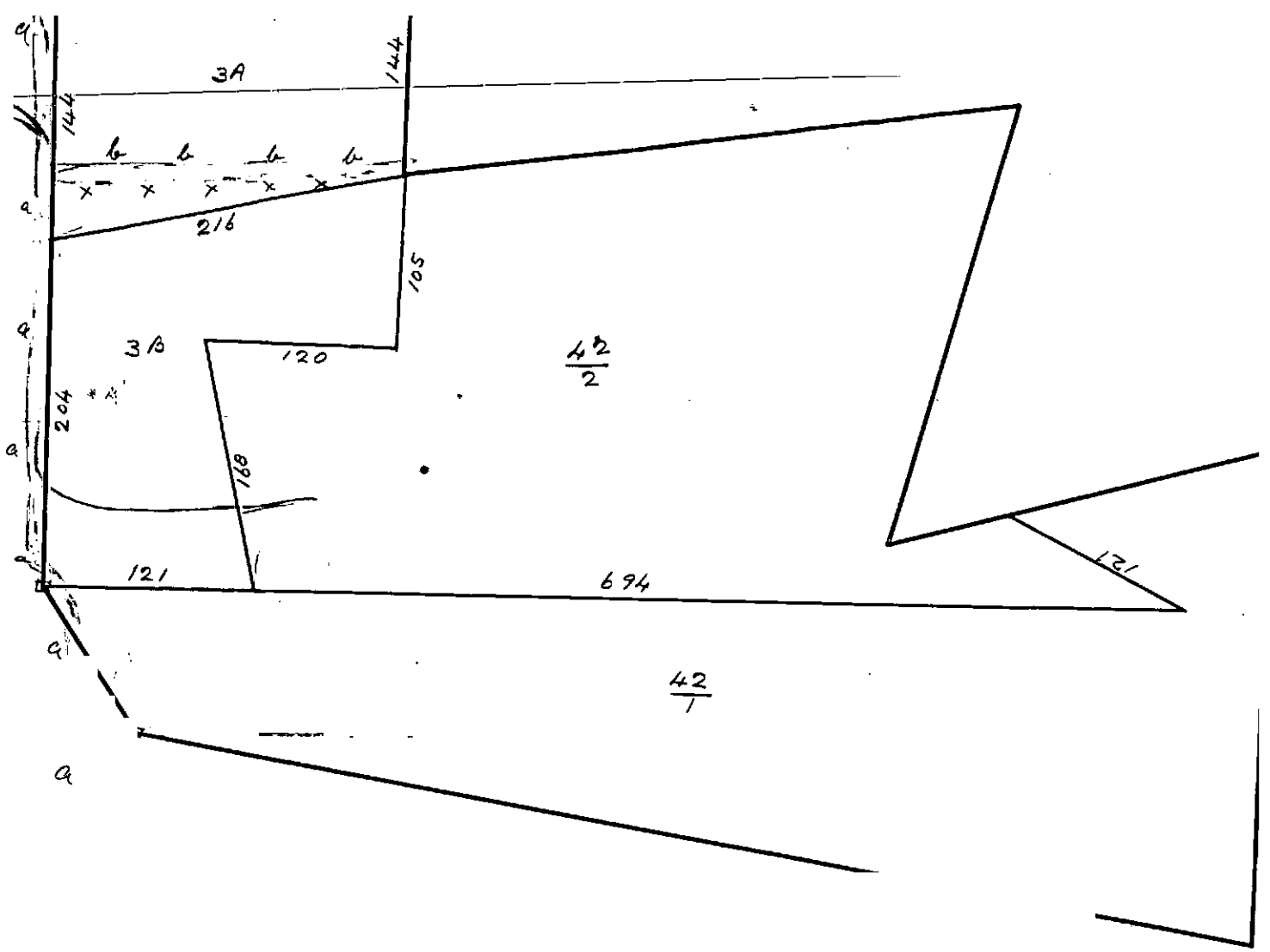
1.9.37

Mangalore Taluk

Kadri Village

Field No. 42





Scale 1 inch: One chain

Copied
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2/8/32
Draftsman

Date of Hearing 3-10-32 15

Subject.

R. F. XXII-A-19--30,004--2-2-31 (6)

FOR MEMBER. / after issue

Secy (S. Kaccara) Mazagaon - Draft - ex. 18 Pm. Kadri Vs - Post - Oak reservation. Decree accepted.

READ AGAIN B. P. No. _____, dated _____ 193

" " " _____, " _____ 193

READ ALSO :—

Register No. _____ From the A 2965/32, No. _____, dated 26.9.32 193 cf 2

" " _____, " " _____, _____, " _____ 19

" " _____, " " _____, " _____, " _____ 19

RESOLUTION. (Jus) / No. 2828 dated 24-9- 1932

OK 4032

The Board sanctions the decree of the said-aced approves the draft-written statement - sub-mitted by the Collector

26.9.32

26.9.32 S

23.9.32.

3-10-1932 Init (after issue)

c/w Collr's Secy Sanks Kaccara with encls return as pr list-

p 8 cf.

3-10-32